

5 Official Compliance Board Opinion 146 (2007)

EXCEPTIONS PERMITTING CLOSED SESSION – LEGAL ADVICE – DISCUSSION WITH COUNSEL REGARDING ADVERTISING ON BUSES HELD TO FALL WITHIN THE EXCEPTION

April 30, 2007

Mr. Joseph H. Potter

The Open Meetings Compliance Board has considered your complaint alleging that the Ocean City Council violated the Open Meetings Act when, at some unspecified time, the Council discussed advertising on buses. For the reasons explained below, we do not find a violation.

I

Complaint and Response

The complaint was premised on comments made by members of the Ocean City Council at a public meeting on January 30, 2007, during a presentation by Hal Adkins, the Town's Director of Public Works. During this presentation, Mr. Adkins raised the issue of whether Ocean City should contract with a private entity to advertise on Ocean City buses. As described in the complaint, "buses are 'wrapped' totally with advertisement of a product or service."

The complaint indicated that, during Mr. Adkins' presentation, Council member Howard indicated that she remembered a prior discussion of this issue several months earlier. Mr. Adkins explained that the earlier discussion occurred in the context of the looming expiration of the existing contract; staff was looking for direction on whether to invest time in this matter. The complainant indicated that he was unable to find any record of the prior discussion in the Council's public meetings during the 12-month period prior to the January 30, 2007, meeting. Therefore, the complaint suggested, the earlier discussion must have occurred in a closed meeting. Furthermore, absent any apparent basis for this discussion in a closed meeting, the complaint inferred that the discussion was in violation of the Open Meetings Act. The complaint also noted a general concern about "the number and regularity of the closed meetings held by the Ocean City Council."

In a timely response on behalf of the Council, City Solicitor Guy Ayres denied that the Open Meetings Act was violated.¹ Mr. Ayres indicated that he had met with Ocean City's Transportation Director to discuss problems related to this kind of advertising on buses, namely the nontransparency of the advertising over rear and side windows and paint damage when the wrap was removed. On June 19, 2006, the Council voted to conduct a closed session to discuss with Mr. Ayres the legal issues associated with the bus advertising contract. The response indicated that the closed session was reported at the next regularly scheduled Council meeting and the public was advised that no action was taken.

During the January 30, 2007, session referred to in the complaint, the Council voted in open session to continue the bus advertising wrap on a limited number of buses but without wrapping bus windows. The response also noted that Council member Hancock has noted his disdain for the bus advertising wraps on more than one occasion in open sessions and that members of the local taxicab association have appeared before the Council, in open session, to complain that a municipal ordinance restricts their ability to advertise on their cabs while the Town sells advertising on its buses. The response confirmed that the only prior discussion specifically addressing the windows took place in the June 19 closed session with Mr. Ayres.

As to the general allegation concerning the number and regularity of closed meetings, the response pointed out that the Ocean City Council serves in both a legislative and executive capacity. "One could conclude that the City Council, by having the executive duties, in addition to the legislative functions would require additional closed sessions."

II

Analysis

Based on the limited record before us, we have no reason to believe that a violation of the Open Meetings Act occurred. Mr. Ayres acknowledged that the Council met in closed session meeting on June 19, 2006, to discuss legal issues related to the method of advertising employed on the buses. If the session was closed in accordance with the Act's procedural requirements, §10-508(d),² and if the discussion was limited to Mr. Ayres' providing legal advice, this closed session was certainly permissible. While it is not entirely clear whether this was the session to which Council member Howard and Mr. Adkins were referring on January 30, 2007,

¹ The Council was granted a brief extension of time in which to respond.

² All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

we accept Mr. Ayres' assurance that no other sessions closed to the public occurred at which this topic was discussed.

The Council did not include with its response any documentation required under the Act.³ Had it done so, we might have been able to evaluate whether the procedural requirements of the Act were satisfied before the June 19 meeting was closed. Nor do we have the minutes of the next open meeting following the June 19 closed session, to evaluate whether the Council complied with its obligation to disclose the topics discussed, persons, present, and each action taken. §10-509(c)(2). Consequently, we express no opinion on these aspects of procedural compliance. We simply hold, based on the limited record available to us, that no violation as alleged in the complaint occurred.⁴

III

Conclusion

Based on the response submitted on behalf of the Council, we have no reason to believe that the Council considered the bus advertising matter at any closed meeting other than the one on June 19, 2006. As to that meeting, the Open Meetings Act provided a lawful basis for closing the meeting. Therefore, we find no violation.

OPEN MEETINGS COMPLIANCE BOARD

Courtney J. McKeldin
Tyler G. Webb

³ In submitting the complaint to the Town for a response, we requested any documentation that might be relevant for our review. *See* §10-502.5(c)(2).

⁴ Subsequent to our receipt of the Council's response, we received your second letter taking issue with Mr. Ayers' explanation and emphasizing the Open Meetings Act policy statement in favor of open meetings. We also received a supplemental response from Mr. Ayers. Neither letter altered our analysis. Our role is to apply the Act to the record before us. We cannot adjudicate disputed versions of events. While the complaint requested an investigation, the Open Meetings Compliance Board is not an investigatory body. Generally, we must rely on the information in the record before us. We decline to comment on the complaint's general statement concerning the number of closed sessions, in that this allegation lacked sufficient specificity to constitute a complaint. *See* §10-502.5(b)(2).